

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 10, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1146, to read as follows:

§ 180.1146 *Beauveria bassiana* Strain GHA; exemption from the requirement of a tolerance.

Beauveria bassiana Strain GHA is exempted from the requirement of a tolerance in or on alfalfa, corn, cotton, potatoes, rapeseed, safflower, small grain crops, soybeans, sugarbeets, sunflower, rangeland, and improved pastures and in meat, milk, or other animal products from livestock grazed on treated rangeland or improved pastures when applied to growing crops according to good agricultural practices.

[FR Doc. 95-7452 Filed 3-22-95; 12:28 pm]

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40 CFR Part 180

[PP 5F4427/R2118; FRL-4942-8]

RIN 2070-AB78

Chlorpyrifos; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a time-limited tolerance for residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] in or on the raw agricultural commodities oats and barley when blended together in a mixture containing not more than 97% oats and not less than 3% barley. General Mills requested this regulation to establish the maximum permissible level for residues of the insecticide in or on the commodities.

EFFECTIVE DATE: This regulation becomes effective March 24, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 5F4427/R2118], may be

submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386; e-mail:

Edwards.Dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 1995 (60 FR 7509), EPA issued a proposed rule that gave notice that the General Mills Co. had submitted pesticide petition (PP) 5F4427 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, amend 40 CFR 180.342 by establishing a tolerance for residues of the insecticide chlorpyrifos in or on the raw agricultural commodity oats at 15 ppm, provided that such tolerance applies only to oats that were treated post-harvest with chlorpyrifos on or before June 15, 1994; that such tolerance applies only to oats to be used as animal feed or as a constituent of animal feed; that, notwithstanding any other provision of law or regulation, this tolerance does not authorize the presence of residues of chlorpyrifos in any human food item made from such treated oats, other than residues resulting from the use of the oats for animal feed purposes; and that such tolerance expires on December 31, 1996.

To ensure that the oats would be unacceptable for human food production, General Mills stated that they would be blended to include not less than 3% barley and 97% oats. Accordingly, the definition of the raw agricultural commodity in the petition was amended to "oats and barley when

blended together in a mixture containing 97% oats and 3% barley."

There were two comments received in response to the proposed rule. General Mills requested that the tolerance expression be changed to specify a minimum barley content and a maximum oat content. EPA has determined that the purpose of the blending would continue to be served by this change and has no objection to the request. The definition of the raw agricultural commodity in the rule is amended to "oats and barley when blended together in a mixture containing not more than 97% oats and not less than 3% barley."

The second comment was received from Michael A. Mentuck, president of Michael A. Mentuck & Associates, Inc., as an interested party and on behalf of one of the interested insurance companies to the circumstances of the petition. He suggested that there is the possibility that the oats containing chlorpyrifos would be acceptable in some foreign countries having appropriate tolerances that would allow the oats to be used as human food, and that the potential for export should be investigated. Alternatively, he suggested that the oats could be limited to use as animal feed in this country by spraying the oats with a dye, thus eliminating the additional expense of blending them with barley.

EPA has decided not to modify the proposed tolerances as suggested by Mr. Mentuck because of enforcement concerns with his suggestions. As to his export proposal, EPA believes it would be difficult to ensure that the adulterated oats, while still in shipment in this country, would not be diverted to domestic, human food use. Blending the oats with barley is a straightforward and effective way of ensuring that the oats will not be used as human food.

EPA has further concern about the use of a dye. Dyes are required for use on seed that is treated with a pesticide, the dye being an indicator that the seed is only to be used for growing crops, not for food or feed. To allow the use of a dye in the present situation could cloud the distinction between seed use and food or feed use. EPA has no supporting information that the dyed oats would be considered acceptable for feed use only and would not be used as human food.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this

rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 16, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.342, by adding new paragraph (f), to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(f) A tolerance of 15 parts per million is established for residues of the pesticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate] in or on the raw agricultural commodities oats and barley when blended together as a mixture containing not more than 97% oats and not less than 3% barley.

(1) Such tolerance applies only to oats that were treated post-harvest with chlorpyrifos on or before June 15, 1994.

(2) Such tolerance applies only to oats to be used as animal feed or as a constituent of animal feed.

(3) Notwithstanding any other provision of law or regulation, this tolerance does not authorize the presence of residues of chlorpyrifos in any human food item made from such treated oats, other than residues resulting from the use of the oats for animal feed purposes.

(4) Such tolerance expires on December 31, 1996.

[FR Doc. 95-7451 Filed 3-22-95; 12:28 pm]

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40 CFR Part 300

[FRL-5172-7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Radium Chemical Company site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the Radium Chemical Company site from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that all appropriate Hazardous Substance Response Trust Fund (Fund)-financed responses under CERCLA have been implemented and that no further cleanup is appropriate. Moreover, EPA and the State of New York have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: March 24, 1995.

ADDRESSES: For further information contact: Janet Cappelli, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, NY 10007-1866, (212) 637-4270.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Radium Chemical Company site, Woodside, Queens County, New York.

The closing date for comments on the Notice of Intent to Delete was December 9, 1994. EPA received no verbal or written comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or